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8 **UNITED STATES DISTRICT COURT**
9 **DISTRICT OF ALASKA**

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11 **JACLYN CABALES and JONATHAN**
12 **CABALES,**

13 **Plaintiffs,**

14 **vs.**

15 **ALBERT E. MORGAN, D.C., ARCTIC**
16 **CHIROPRACTIC BETHEL, LLC, and**
17 **CHRISTOPHER F. TWIFORD, D.C.,**

18 **Defendants,**

19 **vs.**

20 **UNITED STATES OF AMERICA,**

21 **Third-Party Defendant.**

22 } **3:14-CV-00161-JWS**

23 } **ORDER AND OPINION**

24 } **[Re: Motion at docket 58]**

25 **I. MOTION PRESENTED**

26 At docket 58, Defendant Christopher Twiford, D.C. (“Twiford”) filed a motion for
27 partial summary judgment on claims of negligent hiring and negligent supervision.
28 Plaintiffs Jaclyn Cabales (“Cabales”) and Jonathan Cabales (collectively “Plaintiffs”)
respond at docket 62. Twiford replies at docket 65. Oral argument was not requested
and would not assist the court.

II. BACKGROUND

In March of 2013, Plaintiffs filed a complaint in state court against Arctic Chiropractic Bethel, LLC (“Arctic Chiropractic”), Albert Morgan, D.C. (“Morgan”), and Twiford. Twiford is a licensed chiropractor employed at Arctic; he is also a 5% member of Arctic Chiropractic, a limited liability company. Morgan is a chiropractor who worked at Arctic Chiropractic in the spring of 2011 on a temporary basis while Twiford was on vacation.

Plaintiffs allege that on April 2, 2011, Cabales went to Arctic Chiropractic for treatment and received a chiropractic neck manipulation from Morgan.¹ The complaint alleges that Morgan damaged Cabales's right vertebral artery during his neck manipulation and that as a result of the damage she immediately vomited, felt dizzy, and began losing her vision. After contacting Cabales's husband, Jonathan Cabales, a staff member at Arctic Chiropractic, Brooke Arnett called Twiford to inform him about Cabales's symptoms, and Twiford told Arnett that Cabales should go to the Yukon Kuskokwim Health Corporation ("YKHC") Emergency Room and that Arnett should accompany Cabales there so she could inform the hospital of the circumstances surrounding the onset of Cabales's symptoms. It is also undisputed that Arnett informed Cabales that she needed to go to the emergency room and that at some point she offered to call an ambulance for Cabales. Jonathan Cabales arrived and drove Cabales to the emergency room. Arnett also went to the emergency room as directed by Twiford.

The complaint alleges that Morgan, Twiford, and Arctic Chiropractic staff failed to inform the doctors at YKHC about Cabales's recent neck manipulation. It is undisputed, however, that Cabales herself told a nurse at YKHC about her chiropractic treatment and about her subsequent symptoms. Jonathan Cabales also told the hospital that

¹Arctic Chiropractic disputes Plaintiffs' allegations that she received a manipulation that day. However, for purposes of this motion, all evidence in favor of Plaintiffs must be taken as true.

1 Cabales had been at the chiropractor's office and had gotten sick. He also told staff
2 members at YKHC that her chiropractor, Morgan, believed she could have had an
3 aneurism. Jonathan Cabales eventually told Arnett she could go because Cabales was
4 okay to talk for herself. The YKHC doctors diagnosed her with the flu and sent her
5 home. Cabales returned to YKHC two days later, and the doctors then realized the
6 seriousness of her condition and arranged to medevac her to Anchorage. During the
7 departure preparation or during transport, Cabales suffered a seizure. The complaint
8 alleges that Cabales's seizure and the damages stemming therefrom were the result of
9 the negligent chiropractic care she received at Arctic.

10 Based on these allegations, Plaintiffs bring negligence and gross
11 negligence/recklessness claims against Morgan and a negligence claim against Arctic
12 Chiropractic. Additionally, Plaintiffs bring a claim of gross negligence/negligence and a
13 claim of recklessness against Twiford in his individual capacity. The counts against
14 Twiford allege that he owed “a duty to plaintiffs to exercise the degree of knowledge or
15 skill of the degree of care ordinarily exercised under the circumstances by health care
16 providers in the field or specialty in which [he] was practicing” and that he owed “a duty
17 to plaintiffs as the person who supervised Morgan, Arctic Chiropractic and Arctic
18 Chiropractic’s staff” and that he assumed “a duty of care relative to Jaclyn through his
19 instructions to Arctic Chiropractic” on April 2, 2011.² It alleges that he breached these
20 duties by failing to make sure Plaintiffs were aware of the possible injury Cabales
21 sustained from Morgan’s treatment, to ensure that Cabales was otherwise immediately
22 transported to the emergency room, to send the hospital Cabales’s complete records,
23 and to adequately supervise Morgan and the Arctic Chiropractic Staff.³

24 In January of 2014, Arctic filed a third-party complaint against YKHC in state
25 court. The third-party complaint asserts a claim for "Apportionment of Damages"

² Doc. 13-6 at pp. 12-13.

³ Doc. 13-6 at p. 14, ¶ 7.

1 against YKHC under AS 09.17.080, alleging that the YKHC doctors' misdiagnosis, and
2 the subsequent treatment delay, caused Cabales's seizure and thus at least some of
3 the fault should be allocated to YKHC. YKHC is deemed to be part of the Indian Health
4 Service, and thus any medical malpractice actions against YKHC are deemed to be
5 actions against the United States under the Federal Tort Claims Act ("FTCA").⁴ In June
6 of 2014, YKHC removed the action to this court. The United States was then
7 substituted as the third-party defendant.⁵

8 The United States moved to dismiss any claims for damages or monetary
9 recovery against the United States due to Plaintiffs' failure to file a timely claim under
10 28 U.S.C. § 2401(b). The court granted the motion during an oral argument heard on
11 December 8, 2014. The court also denied Plaintiffs' request to abstain from exercising
12 jurisdiction over the matter. Twiford now moves for partial summary judgment as to the
13 claims against him premised on negligent supervision and negligent hiring.

III. STANDARD OF REVIEW

Summary judgment is appropriate where “there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.”⁶ The materiality requirement ensures that “only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment.”⁷ Ultimately, “summary judgment will not lie if the . . . evidence is such that a reasonable jury could return a verdict for the nonmoving party.”⁸ However, summary judgment is mandated under Rule 56(c) “against a party who fails to make a showing sufficient to

⁴ See doc. 7.

5 Doc. 8.

⁶ Fed. R. Civ. P. 56(a).

⁷ *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

8 *Id*

1 establish the existence of an element essential to that party's case, and on which that
2 party will bear the burden of proof at trial.”⁹

The moving party has the burden of showing that there is no genuine dispute as to any material fact.¹⁰ Where the nonmoving party will bear the burden of proof at trial on a dispositive issue, the moving party need not present evidence to show that summary judgment is warranted; it need only point out the lack of any genuine dispute as to material fact.¹¹ Once the moving party has met this burden, the nonmoving party must set forth evidence of specific facts showing the existence of a genuine issue for trial.¹² All evidence presented by the non-movant must be believed for purposes of summary judgment and all justifiable inferences must be drawn in favor of the non-movant.¹³ However, the non-moving party may not rest upon mere allegations or denials, but must show that there is sufficient evidence supporting the claimed factual dispute to require a fact-finder to resolve the parties' differing versions of the truth at trial.¹⁴

IV. DISCUSSION

A. Negligent Hiring

17 Twiford asks that the court grant summary judgment in his favor as to Plaintiffs' 18 claim for negligent hiring. After due consideration of the complaint, the court is unable 19 to discern a negligent hiring claim against Twiford. Neither party provides any citation to 20 the record when discussing this claim. The most recent complaint the court is able to

⁹ *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).

¹⁰ *Id.* at 323.

¹¹ *Id.* at 323-25.

¹² *Anderson*, 477 U.S. at 248-49.

¹³ *Id.* at 255.

¹⁴ *Id.* at 248-49.

1 locate is the First Amended Complaint. That document was not included in the removal
2 notice at docket 1. Instead, the United States provided the First Amended Complaint
3 when it filed the complete state record with the court.¹⁵ While the case was still pending
4 in state court, Plaintiffs moved for leave to file a Second Amended Complaint to clarify
5 that they wish to bring a negligent hiring claim against Twiford. However, given the
6 court’s review of the record provided, the state court never ruled on that motion before it
7 was removed, and Plaintiffs have not brought the matter to this court’s attention or
8 asked for leave to amend. Regardless, to the extent the First Amended Complaint can
9 be read to contain a claim for negligent hiring, summary judgment in favor of Twiford is
10 warranted.

Generally, an employer has a duty to exercise reasonable care in making a decision to hire an employee.¹⁶ Twiford argues that he cannot be individually liable for hiring Morgan because the record establishes that Morgan worked for Arctic Chiropractic, not Twiford, and he argues that the fact that Twiford is a member with an interest, Arctic Chiropractic does not make Twiford individually liable for hiring Morgan. Twiford fails to acknowledge that generally an agent is liable for his or her own torts, notwithstanding the fact that the person may have acted for the company or under directions of another.¹⁷ Instead, he merely assumes that the duty to carefully hire an employee only falls on the employer and not the agent of the employer who is responsible for or assumes hiring duties, as Twiford did here. The parties do not cite, and the court could not locate, any Alaska case discussing whether an LLC member who directly participates in hiring employees owes a duty to third parties to competently

¹⁵ Docs. 12-15 (check).

¹⁶ See *Di Cosala v. Kay*, 450 A.2d 508, 514-15 (N.J. 1982) ("[P]ersons must use reasonable care in the employment of all instrumentalities—people as well as machinery—where members of the public may be expected to come into contact with such instrumentalities.").

¹⁷ *Austin v. Fulton Ins. Co.*, 498 P.2d 702, 704 (Alaska 1972); *Ranes & Shine, LLC v. Macdonald Miller Alaska, Inc.*, No. S-15222, 2015 WL 1958657, at * 7 (Alaska May 1, 2015).

1 hire those employees. However, the court need not consider the issue because even
2 assuming Twiford did have such a duty, the duty did not extend as far as Plaintiffs
3 assert.¹⁸

4 The tort of negligent hiring is not based on vicarious liability. Rather, the
5 employer is deemed directly liable for exposing the public to an employee who is a
6 known danger or for hiring an improper person to do work that involves risk of harm to
7 others.¹⁹ The tort of negligent hiring generally focuses on whether the employer should
8 have known that hiring the employee created a particular risk and that particular risk
9 then materializes.²⁰ In other words, there must be some evidence that the employer
10 knew or should have known of the employee's incompetence or unskillfulness or the
11 employee's propensity for the conduct that caused the injury.²¹ Thus, the duty imposed
12 on an employer is to hire a competent and non-dangerous employee. Twiford
13 discharged this duty. There are no issues of fact as to Morgan's qualifications or
14 experience. There is nothing on the record to suggest that Morgan had a propensity to
15 engage in negligent manipulations, had caused prior injuries, or was unqualified or
16 inexperienced so as to be dangerous to Arctic Chiropractic's patients.

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19 ¹⁸ *Mulvihill v. Union Oil Co.*, 859 P.2d 1310, 1314 n.4 (Alaska 1993) (noting that the
20 dispute involved the precise nature and extent of the defendant's duty to act and not the nature
21 and extent of the act undertaken, which was undisputed, and thus it was a question of law that
22 could be decided at the summary judgment stage).

23 ¹⁹ Restatement (Second) of Torts § 317 cmt c (1965); Restatement (Second) of Agency
24 § 213 cmt d (1958); see also *Kroll v. Paul*, 1993 WL 13563648, at *1 (Alaska Oct. 6, 1993).

25 ²⁰ See *Phillips v. TLC Plumbing, Inc.*, 172 Cal. App.4th 1133, 1139 (2009).

26 ²¹ Restatement (Second) of Agency § 213 cmt d (1958) ("The dangerous quality in the
27 agent may consist of his incompetence or unskillfulness due to his youth or his lack of
28 experience considered with reference to the act to be performed. An agent, although otherwise
competent, may be incompetent because of his reckless or vicious disposition, and if a
principal, without exercising due care in selection, employs a vicious person to do an act which
necessarily brings him in contact with others while in the performance of a duty, he is subject to
liability for harm caused by the vicious propensity."); see also Restatement (Third) of Agency
§ 7.05 cmt b (2006).

1 There is some dispute about whether Morgan was hired as an independent
2 contractor rather than an employee. The distinction does not matter. An employer has
3 a duty to employ a competent and careful contractor to do work which will involve a risk
4 of physical harm unless it is skillfully and carefully done.²² Here, the evidence
5 demonstrates that Arctic Chiropractic and/or Twiford met that duty. A contractor is
6 incompetent if he or she lacks the necessary experience or skills and not simply
7 because there was a previous lack of attention or diligence in applying such experience.
8 In other words, the employer is directly liable for harm caused by the contractor's lack of
9 skill or experience but not for harm caused by inattention or negligence.²³ Again, there
10 is no evidence that Morgan lacked the proper credentials. Rather, the only evidence in
11 the record regarding Morgan's qualifications demonstrates that he had many years of
12 prior experience and had worked at other Arctic Chiropractic offices. Moreover, there is
13 no evidence in the record that would otherwise suggest he lacked the requisite
14 professional skills.

15 Plaintiffs stress that Twiford did not document the precautions he took when
16 hiring Morgan, and thus there is no evidence to demonstrate that Twiford conducted a
17 diligent investigation into Morgan's qualifications. However, Plaintiffs bear the burden of
18 proof at trial on this issue. Twiford does not need to produce evidence to show that
19 summary judgment is warranted; he only needs to point out the lack of any genuine
20 dispute as to material fact.²⁴ Here, the extent of Twiford's duty was to hire a qualified
21 chiropractor, and there is no evidence to suggest a disputed fact about Morgan's
22 professional credentials or experience. Thus, it is Plaintiffs' burden to come forward

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25 ²² Restatement (Second) of Torts § 411 (1965); see also *Sievers v. McClure*, 746 P.2d
26 885, 887 (Alaska 1987).

27 ²³ Restatement (Second) of Torts § 411 cmt b (1965).

28 ²⁴ *Celotex Corp.*, 477 U.S. at 323-25.

1 with some evidence to show that Morgan lacked the requisite qualifications and
2 experience that an adequate vetting would have revealed.²⁵

3 **B. Negligent Supervision**

4 **1. Supervision of Morgan**

5 Plaintiffs' complaint alleges that Twiford was Morgan's supervisor and thus had
6 a duty to oversee Morgan's treatment of Cabales. The complaint focuses only on
7 Twiford's involvement after Cabales's symptoms arose.²⁶ Twiford asks that the claim
8 against him based on his alleged failure to adequately supervise Morgan be dismissed,
9 because he had no duty to oversee Morgan's treatment decisions. Indeed, in order to
10 be liable for the injury Cabales alleges she suffered as a result of Morgan's chiropractic
11 treatment, Twiford must have owed Plaintiffs a duty to supervise Morgan.²⁷ Whether a
12 duty exists is a matter of law.²⁸ Here, there is no statute, regulation, contract,
13 undertaking, preexisting relationship, or existing case law imposing a duty on Twiford,
14 who was not Morgan's employer, to supervise the decisions made by Morgan, a
15 qualified professional working at Arctic Chiropractic in Twiford's absence.²⁹ Thus, the

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19 ²⁵ *Anderson*, 477 U.S. at 248-49.

20 ²⁶ The complaint does not set forth any allegation that Twiford should have provided
21 instructions to Morgan before Morgan saw Cabales for treatment that day; rather, the
22 allegations merely state that Twiford was negligent in his actions after Cabales saw Morgan and
23 complained of symptoms. See doc. 13-6 at pp. 8-9, 14 (¶¶ 17, 47).

24 ²⁷ "In order to establish a cause of action for negligence, a plaintiff must show a duty of
25 care owed to him by the defendant, a breach of that duty, and that damage was proximately
26 caused by the breach." *Estate of Mickelsen ex rel. Mickelsen v. North-Wend Foods, Inc.*, 274
27 P.3d 1193, 1198 (Alaska 2012) (quoting *Shooshanian v. Wagner*, 672 P.2d 455, 464 (Alaska
28 1983)).

29 ²⁸ *Mulvihill*, 859 P.2d at 1314 n.4; *Bolieu v. Sisters of Providence in Wash.*, 953 P.2d
30 1233, 1235 (Alaska 1998).

31 ²⁹ *McGrew v. State, Dep't of Health & Soc. Servs., Div. of Family & Youth Servs.*, 106
32 P.3d 319, 322 (Alaska 2005).

1 court considers whether public policy requires the imposition of a duty by applying the
2 following factors:

3 The foreseeability of harm to the plaintiff, the degree of certainty that the
4 plaintiff suffered injury, the closeness of the connection between the
5 defendant's conduct and the injury suffered, the moral blame attached to
6 the defendant's conduct, the policy of preventing future harm, the extent
of the burden to the defendant and consequences to the community of
imposing a duty to exercise care with resulting liability for breach, and the
availability, cost, and prevalence of insurance for the risk involved.³⁰

7 "Foreseeability of harm is the most important factor, followed by the burden on the
8 defendant and the consequences to the community."³¹ The court concludes that the
9 balance of factors does not support putting a duty on medical professionals in these
10 particular circumstances. The foreseeability of harm presented here is low. Twiford was
11 on vacation, and Cabales was under the care of another doctor; it was not foreseeable
12 that the other doctor would not take the appropriate steps to treat Cabales. The burden
13 on Twiford and other doctors in similar situations is too great. It would inhibit medical
14 providers from taking a vacation for fear of exposing themselves to liability for the
15 malpractice of substitute professionals. Moreover, the connection between Twiford's
16 conduct and Cabales's injury is attenuated. Twiford did not recommend what particular
17 chiropractic treatment Cabales should receive and was not otherwise involved in her
18 treatment that day because Morgan was the attending chiropractor and Morgan did not
19 call Twiford for consultation about Cabales's condition either before his chiropractic
20 treatment or after her onset of symptoms. Even when Twiford became involved
21 because of Arnett's phone call, his advice was minimal; he stated that Cabales be
22 taken to the emergency room and did not recommend further chiropractic treatment or
23 discuss the details surrounding her treatment that day or her symptoms. Indeed,
24 Plaintiffs do not base their negligence claims on Twiford's advice.

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26 ³⁰ *Wiersum v. Harder*, 316 P.3d 557, 566 n. 39 (Alaska 2013) (citing *D.S.W. v.*
27 *Fairbanks North Star Borough Sch. Dist.*, 628 P.2d 554, 555 (Alaska 1981)).

28 ³¹ *Wiersum*, 316 P.3d at 566.

1 Plaintiffs assert that Twiford had a duty to protect Cabales from Morgan's
2 alleged malpractice based on their prior relationship with Twiford. They assert that
3 because Twiford had been her chiropractor in the past, he had a continuing duty to
4 protect her. Plaintiffs provide no persuasive argument to support this position. "There is
5 no duty so to control the conduct of a third person as to prevent him from causing
6 physical harm to another unless . . . a special relation exists between the actor and the
7 other which gives to the other a right to protection."³² The special relationships that give
8 rise to a duty to protect are more in line with common carriers and their passengers or
9 innkeepers and their guests, not physicians and their patients when a different
10 physician is treating the patients.³³

11 An employer can be liable for failing to adequately control the work of an
12 independent contractor that results in physical harm when the employer retains a
13 certain amount of control over the independent contractor's work, but the amount of
14 control retained must be extensive. It is not enough that the employer has the right to
15 order the work stopped or resumed, to inspect its progress or to receive reports, to
16 make suggestions or recommendations, or to prescribe alterations and deviations.
17 Rather, "[t]here must be such a retention of a right of supervision that the contractor is
18 not entirely free to do the work in his own way."³⁴ Here, there is no evidence that
19 Twiford retained this amount of control over Morgan's treatment of patients in his
20 absence.

21 **2. Supervision of Arnett**

22 Plaintiffs' allegations against Twiford are not just based on his alleged failure to
23 supervise Morgan, but also on his alleged failure to supervise the other Arctic
24 Chiropractic staff members, like Arnett. They allege that Twiford had a duty to ensure

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26 ³² Restatement (Second) of Torts § 315.

27 ³³ Restatement (Second) of Torts §§ 314A, 320.

28 ³⁴ Restatement (Second) of Torts § 414 cmt c.

1 that Arnett complied with his instruction to take Cabales to the emergency room and
2 provide the hospital with all pertinent information. Again, the parties dispute whether
3 Twiford had a duty to supervise the staff members at Arctic Chiropractic that day.
4 Regardless of whether Twiford assumed responsibility for supervising Arnett's actions
5 that day, there is no evidence from which a jury could find the requisite element of
6 causation. "Alaska follows the 'substantial factor test' of causation, which generally
7 requires the plaintiff to show that the accident would not have happened 'but for' the
8 defendant's negligence and that the negligent act was so important in bringing about
9 the injury that reasonable individuals would regard it as a cause and attach
10 responsibility to it."³⁵ While "determinations of proximate cause usually involve
11 questions of fact within the province of the jury," proximate cause can be determined as
12 a matter of law when reasonable minds could not differ.³⁶

13 Here, there is no dispute that Cabales was taken to the emergency room, no
14 later than one and a half hours later. Plaintiffs emphasize Twiford's failure to make sure
15 Cabales was immediately taken to the hospital, but the primary allegation in the
16 complaint is that the injury occurred when Morgan manipulated her neck and not while
17 she was waiting at Arctic Chiropractic to be taken to the hospital. The seizures Cabales
18 suffered, allegedly as a result of the April 2, 2011 manipulation, occurred two days later.
19 Again, Twiford, the non-moving party, has demonstrated that there is no evidence in the
20 record to create a disputed fact as to causation, and thus the burden shifts to Plaintiffs
21 to come forward with evidence of causation. There is nothing to establish that a delay in
22 getting to the hospital caused or worsened Cabales's injuries. While it is disputed as to
23 whether Arnett discussed the circumstances with emergency room staff herself as
24 instructed, it is undisputed that Plaintiffs themselves informed the hospital staff about
25 her chiropractic treatment that day and that Jonathan Cabales told the hospital doctors

³⁵ *Winschel v. Brown*, 171 P.3d 142, 148 (Alaska 2007).

36 *Id.*

1 about Morgan's concerns about an aneurism. The doctors nonetheless sent her home
2 with a flu diagnosis. There is no evidence to suggest that if the hospital had received
3 the same information through Arnett, the doctors would have made a different
4 diagnosis. In other words, no reasonable mind could find that Twiford's alleged failure
5 to follow through with his instructions to Arnett was an important factor in causing the
6 injury.

7 **C. Malpractice Claim**

8 Twiford argues that Plaintiffs have attempted to expand the complaint against
9 Twiford in their response brief. Plaintiffs assert in their brief that not only did he breach
10 his supervisory duties, also he assumed a duty as to Cabales's safety when he talked
11 to Arnett on the phone and that he should have signed off on any treatment provided to
12 Cabales, called an ambulance himself, and talked to the hospital doctors directly.
13 Twiford correctly notes that the complaint does not extend quite so far. It does not
14 allege that Twiford was responsible for Cabales's allegedly harmful chiropractic
15 treatment that day. It does however allege that Twiford himself assumed a duty of care
16 relative to Cabales when he got involved over the phone and that he breached his duty
17 of care to Cabales by failing to inform the Plaintiffs about the potential seriousness of
18 her symptoms, by failing to make sure Cabales was taken directly to the hospital, and
19 by failing to provide records to the emergency room. In other words, the complaint can
20 be read to allege that he engaged in malpractice himself. However, as noted above,
21 evidence of causation is lacking here. Plaintiffs must have some evidence that
22 Cabales's injury would not have happened "but for" the defendant's negligence and that
23 the negligent act was significant in bringing about the injury that reasonable individuals
24 would attach responsibility to it.³⁷ As discussed above, there is no evidence presented
25 to suggest that the one-and-a-half-hour delay in getting Cabales to the hospital caused
26 or worsened the injury. There is no evidence from which a jury could infer that a phone
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28 ³⁷ *Winschel v. Brown*, 171 P.3d 142, 148 (Alaska 2007).

1 call to the hospital from Twiford or records faxed from Twiford would have made a
2 difference in the hospital's treatment of Cabales. Plaintiffs admit that they informed the
3 hospital about her chiropractor visit and about Morgan's concern. Responsibility for
4 what the hospital did with such information does not fall on Twiford. The court
5 concludes that reasonable minds could not differ.³⁸

6 **V. CONCLUSION**

7 Based on the preceding discussion, Defendant Twiford's motion at docket 58 is
8 **GRANTED.**

9 DATED this 21st day of May 2015.

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11 /s/ JOHN W. SEDWICK
12 SENIOR UNITED STATES DISTRICT JUDGE
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28 ³⁸ *Id.*